United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

APRIL TERM, 1905.

No. 1545. 357

No. 15, SPECIAL CALENDAR.

ALBERT FIELDS, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 28, 1905.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

APRIL TERM, 1905.

No. 1545.

No. 15, SPECIAL CALENDAR.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 3, 1905.

In the Court of Appeals of the District of Columbia.

ALBERT FIELDS, Plaintiff in Error,
vs.
DISTRICT OF COLUMBIA. } No. 1545.

a In the Police Court of the District of Columbia, April Term, 1905.

DISTRICT OF COLUMBIA
vs.
ALBERT FIELDS. } No. 268,611. Information for Person of Evil Life and Fame.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 (*Information.*)

In the Police Court of the District of Columbia, April Term, A. D. 1905.

THE DISTRICT OF COLUMBIA, *ss:*

Andrew B. Duvall, Esq., corporation counsel, by James L. Pugh, Jr., Esq., assistant corporation counsel, who, for the District of Columbia, prosecutes in this behalf in his proper person, comes here into court, and causes the court to be informed and complains that Albert Fields, late of the District of Columbia, on the first day of March, in the year nineteen hundred and five and within the District of Columbia, was then and there, and has been ever since that day, and still is a vagrant; an idle and disorderly person; a person of evil life and fame; a person without visible means of support; a person repeatedly in and about the streets, avenues, alleys, roads, and highways, to wit: "C" street, northwest, contrary to and in violation of an act of Congress entitled "An act to amend an act for the preservation of the public peace and the protection of property in the District of Columbia," approved July 8, 1898, and constituting a law of the District of Columbia.

ANDREW B. DUVALL, ESQ.,
Corporation Counsel,
By J. L. PUGH, JR.,
Assistant Corporation Counsel.

Sworn to before me by Wm. McDonnell on this 11th day of April, 1905.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Deputy Clerk Police Court for the District of Columbia.

2 (*Motion to Quash Information.*)

In the Police Court of the District of Columbia, April Term, A. D. 1905.

DISTRICT OF COLUMBIA
vs.
ALBERT FIELDS. } No. 268,611.

Now comes the defendant in the above entitled cause and moves the court to quash the information filed against him herein, charging him with the offence of vagrancy, for the following reasons, to wit:

First. Because the information in this cause charges several distinct offences against the defendant, but he is not advised by said information which one of the said offences he is called upon to answer.

Second. The act of Congress of July 8th 1898, which act is a substitution for the vagrancy act of 1892 does not define the offence of vagrancy, nor does it define with sufficient definiteness any of the offences mentioned in said act of 1898, so as to acquaint the defendant with the particular charge which he is called upon to answer.

Third. The vagrancy law commonly known as the act of July 8th, 1898, upon which this information is drawn is vague uncertain and indefinite, not defining the meaning of vagrant and failing to describe and set forth with certainty the other offences described in said act. Said act is therefore unconstitutional and void.

Fourth. The act of 1898 is further unconstitutional and void because it seeks to nullify the offences known as common law vagrancy without defining the term of the offence, and then imposes a fine where the accused is convicted instead of permitting them to give bonds according to the provisions of the common law, when it was never intended to fine vagrants, because the very fact of the accused being a public nuisance and liable to become a public charge upon the community; therefore in contemplation of law, such offenders were never intended to be required to *apy* a fine as is required by this act.

Because the information in this cause is ambiguous, unintelligible and uncertain, therefore this defendant in being called upon to meet any of the charges therein contained could not receive a fair and impartial trial, according to the provisions of the Constitution in

the absence of being properly informed as to which one of the several offences he is to meet in this cause.

THOMAS L. JONES,
ARMOND W. SCOTT,
Attorneys for Defendant.

3 (*Demurrer.*)

In the Police Court of the District of Columbia, April Term, 1905.

DISTRICT OF COLUMBIA
vs.
ALBERT FIELDS. } Information No. 268,611.

And the said Albert Fields in his own proper person, and through his counsel, Thomas L. Jones and Armond W. Scott cometh into court here, and having heard the said information read saith, that the said information and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient and that he is not bound by the law of the land to answer the same; and this he is ready to verify. Wherefore for the want of a sufficient information in this behalf the defendant, Albert Fields, prays judgment, and that by this court here he may be dismissed and discharged from the premises in the said information herein filed.

THOMAS L. JONES AND
ARMOND W. SCOTT.

4 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA
vs.
ALBERT FIELDS. } No. 268,611. Docket No. 134.

Bill of Exceptions.

Be it remembered that this cause, which came on for hearing on the 11th day of April, A. D. 1905, upon motion of counsel for the defendant the said cause was continued to the 12th day of April, A. D. 1905, and on said last mentioned date, the defendant by his counsel filed the following demurrer to the information, to-wit:—

"The defendant, Albert Fields in his own proper person, and through his counsel, Thomas L. Jones and Armond W. Scott, cometh into court here, and having heard the said information read, saith that the said information and the matters therein contained in manner and form as the same are above stated and set forth, are not sufficient in law, and that he is not bound by the law of the land to

answer the same; and this he is ready to verify: Wherefore for want of sufficient information in this behalf the said Albert Fields prays judgment, and that by this court here he may be dismissed and discharged from the said premises in the said information herein filed."

And after argument by counsel, the court overruled said demurrer, to which said ruling the defendant by his counsel then and there duly noted exceptions at the time and gave the proper notice of his intention to apply to the Court of Appeals for a writ of error, and defendant by his counsel prays the court to sign and seal this his first bill of exceptions, which is accordingly done now for then, this 15th day of April, A. D. 1905.

(Signed) I. G. KIMBALL,
Judge Police Court.

And thereupon the defendant by his counsel filed a motion to quash the said information on the following grounds, to-wit:—

"First. Because the information in this cause charges several distinct offenses against the defendant, but he is not advised by said information which one of the several offenses he is called upon to answer."

"Second. The act of Congress of July 8th, 1898, which act is a substitution for the vagrancy act of 1892, does not define the offense of vagrancy, nor does it define with sufficient definiteness any of the other offenses mentioned in said act of 1898, so as to acquaint
5 the defendant with the particular charge which he is called upon to answer."

"Third. The vagrancy law, commonly known as the act of July, 8th 1898, upon which this information is drawn, is vague, uncertain and indefinite, not defining the meaning of vagrant and failing to describe and set forth with certainty the offenses described in said act. Said act is therefore unconstitutional and void."

"Fourth. The act of 1898, is further unconstitutional and void, because it seeks to change the offense known as common law vagrancy without defining the offense, and in that it imposes a fine or permits the accused to give bond when it was never intended to fine vagrants."

"Fifth. Because the information in this cause is ambiguous, unintelligible and uncertain, therefore the defendant in being called upon to meet any of the charges therein contained could not receive a fair and impartial trial according to the provisions of the Constitution in the absence of being properly informed as to which one of the several offenses he is to meet in this case."

And after argument by counsel of the said motion to quash, the court overruled said motion, to which ruling of the court, the defendant by his counsel then and there duly noted exceptions at the time and gave the proper notice of his intention of applying to the Court of Appeals for a writ of error, and defendant by his counsel prays the court to sign and seal this his second bill of exceptions,

which is accordingly done now for then, this 15th day of April, A. D. 1905.

(Signed) I. G. KIMBALL,
Judge Police Court.

And whereupon the defendant pleaded not guily to the information and demanded a jury trial, which said demand for a jury trial was denied him by the court, to which ruling of the court the defendant by his counsel then and there duly noted exceptions at the time and gave the proper notice of his intention to apply to the Court of Appeals for a writ of error, and the defendant by his counsel prays the court to sign and seal this his third bill of exceptions, which is accordingly done now for then, this 15th day of April, A. D. 1905.

(Signed) I. G. KIMBALL,
Judge Police Court.

Thereupon the District in order to maintain the issues on its part joined, produced as a witness, WILLIAM MCDONALD, a policeman, who testified that he had known the defendant for about twelve years and that he had seen him since the 1st day of March, down in the "Division" on different occasions at nights in houses of prostitution playing the piano, always however at night That he charged
6 for his services $1.50 per night in addition to what he got by collections. That when the defendant played the piano, prostitutes would sing and dance. He further testified that the defendant was known as a "professor" and made his living by playing the piano in these houses. That during the cross examination of said witness, counsel for the defendant asked the court; "Upon which of the charges contained in the information the defendant was being tried?" The assistant corporation counsel replied, "that which charged him with being a man of evil life and that he abandoned all of the others." Officer EDWARD CURRY, a witness for the District gave substantially the same testimony as that offered by the witness McDonald, except that he had only known the defendant for two weeks prior to his arrest, and that these piano players were secured to entertain the guests. Here the District rested. And thereupon the defendant by his counsel demurred to the evidence offered against him and moved the court to discharge defendant from custody upon the grounds that the evidence did not disclose, that the defendant was guilty of any of the several offenses charged in the information, which said demurrer was overruled by the court, to which ruling of the court, the defendant by his counsel then and there duly noted exceptions at the time and gave the proper notice of his intention to apply to the Court of Appeals for a writ of error, and defendant by his counsel prays the court to sign and seal this his fourth bill of exceptions, which is accordingly done now for then, this 15th day of April, A. D. 1905.

(Signed) I. G. KIMBALL,
Judge Police Court.

And whereupon the defendant in order to maintain the issues on his part joined, produced as a witness, AUGUSTUS FIELDS, who testified that the defendant was his son and that he (defendant) was a married man and lived with his wife at No. 1201 Madison street northwest; that he worked for a living and was regularly employed as a driver of a grocery wagon. That he played the piano at home, but that he (witness) did not take any stock in music himself and had no knowledge of his son playing the piano in the "Division;"
7 that his son visited him on Sundays; that he did not know anything about his absence from home at night, but he knew he worked every day and supported his wife. CHARLES CONNER another witness produced on behalf of defendant, testified that he (defendant) was his brother; that defendant was a married man and lived with his wife on Madison street northwest; that he worked every day for his living and supported his family and that the defendant was a piano player. Here the defendant rested. Whereupon the defendant by his counsel moved the court to instruct itsself, that as a matter of law, the defendant is not guilty of the charge alleged in the information, because nothing appears in the evidence which shows or tends to show that the defendant is a vagrant or that he is guilty of committing any offense charg-able under any clause in said information. After argument of said motion by counsel, said motion was overruled by the court, to which ruling of the court, the defendant by his counsel then and there duly noted exceptions at the time and gave the proper notice of his intention to apply to the Court of Appeals for a writ of error, and the defendant by his counsel prays the court to sign and seal this his fifth bill of exceptions, which is accordingly done now for then, this 15th day of April, A. D. 1905.

(Signed) I. G. KIMBALL,
Judge Police Court.

Thereupon the court sentence- the defendant to pay a fine of forty ($40.00) dollars and in default to serve six months in the work-house.

(Signed) I. G. KIMBALL,
Judge Police Court.

8 (*Copy of Docket Entries.*)

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA
vs.
ALBERT FIELDS. } No. 268,611. Information for Person of Evil Life and Fame.

April 12, 1905.—Motion to quash information filed, argued and overruled.

Demurrer to information filed, argued and overruled.

Defendant arraigned. Plea: Not guilty. Jury trial demanded. Demand for jury trial overruled.

Judgment: Guilty. Sentence: To pay a fine of forty dollars, and, in default, to be committed to the workhouse for the term of one hundred and eighty days.

Exceptions taken to the rulings of the court on matters of law by the defendant and notice given in open court at the time of the several rulings of his intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error.

Recognizance in the sum of one hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia, upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in the police court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Augustus Field, surety.

April 15, 1905.—Bills of exceptions filed, settled and signed.

April 21, 1905.—Writ of error received from the Court of Appeals of the District of Columbia.

9 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 8 inclusive, to be true copies of originals in cause No. 268,611 wherein The District of Columbia is plaintiff and Albert Fields defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 28th day — April A. D. 1905.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

10 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Ivory G. Kimball, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between District of Columbia, plaintiff, and Albert Fields, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 21st day of April, in the year of our Lord one thousand nine hundred and five.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—

SETH SHEPARD,
Chief Justice of the Court of
Appeals of the District of Columbia.

[Endorsed:] Filed Apr. 21, 1905. Joseph Y. Potts, clerk police court, D. C.

Endorsed on cover: District of Columbia police court. No. 1545. Albert Fields, plaintiff in error, *vs.* District of Columbia. Court of Appeals, District of Columbia. Filed Apr. 28, 1905. Henry W. Hodges, clerk.

In the Court of Appeals of the District of Columbia.

APRIL TERM, 1905.

No. 1545.

No. 15 SPECIAL CALENDAR.

ALBERT FIELDS,
Plaintiff in Error

vs.

DISTRICT OF COLUMBIA,
Defendant in Error.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

THOMAS L. JONES,
ARMOND W. SCOTT, AND
MARION T. CLINKSCALES,
Attorneys for Plaintiff in Error.

MILANS, LAW PRINTER, 615 E STREET N. W., WASHINGTON, D. C.

In the Court of Appeals of the District of Columbia.

APRIL TERM, 1905.

ALBERT FIELDS,
Plaintiff in Error,
vs.
DISTRICT OF COLUMBIA,
Defendant in Error.
No. 1545.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

This is a writ of error to the Police Court of the District of Columbia to review a judgment of that court finding plaintiff in error guilty on an information filed against him, charging that—

> "On the first day of March, in the year nineteen hundred and five, and within the District of Columbia, was then and there, and has been ever since that day, and still is, a vagrant; an idle and disorderly person; a person of evil life and fame; a person without visible means of support; a person repeatedly in and about the streets, avenues, alleys, roads and highways, to-wit: "C" Street,

> Northwest, contrary to and in violation of an Act of Congress * * * approved July 8th, 1898." (Rec., p. 1.)

The defendant appeared in open court, and, upon being arraigned, moved the Court to quash the information, on the grounds set out on pages 2 and 4 of the record.

The Court overruled said motion to quash, and proper exceptions were noted. Thereupon the defendant, by counsel, filed a demurrer, on the ground set out on page 3 of the record.

The Court overruled said demurrer, and proper exceptions were noted. Immediately thereafter a plea of "not guilty" was entered, and a trial by jury was demanded, which said demand for a trial by jury was denied by the Court, and proper exceptions noted. (Rec., p. 5.) Thereupon the District, in order to maintain the issues on its part joined, produced as a witness, William McDonald, a policeman, who testified that he had known the defendant about 12 years, and had seen him since the first day of March down in the "Division" on different occasions at night in houses of prostitution playing the piano, always, however, at night. He charged for his services $1.50 per night, in addition to what he got by collections; that when the defendant played the piano, the prostitutes would sing and dance, and that the defendant was known as "professor," and made his living by playing the piano in these houses. (Rec., p. 5).

Officer Edward Curry, a witness for the District, gave substantially the same testimony as that of the former witness, except that he had only known the defendant for two weeks prior to his arrest, and these piono players

were secured to entertain the guests. Here the District rested, and the defendant by his counsel demurred to the evidence offered against him, and moved the Court to discharge him from custody upon the ground that—

> "The evidence did not disclose that the defendant was guilty of any of the several offenses charged in the information." (Rec., p. 5).

The Court overruled said demurrer, and proper exceptions were noted. Thereupon the defendant in order to maintain the issues on his part joined, produced as a witness Augustus Fields, who testified that defendant was his son and was married; that he lived with his wife at No. 1201 Madison Street Northwest; worked every day and was regularly employed as a driver of a grocery wagon; that he played the piano at home, but he had no knowledge of his son playing the piano in the "Division;" that the defendant supported his wife, and that he, witness, did not know about his son's absence from home at night. Another witness, Charles Conner, produced on behalf of the defendant, said that defendant was his brother, was a married man and lived with his wife; that defendant worked every day for his living and supported his family. Here the defendant rested, and the case being closed, the defendant by his counsel moved the Court to instruct itself, as a matter of law, that defendant was not guilty on the evidence produced on the ground that the testimony failed to show that defendant was a vagrant or that he was guilty of committing any of the offenses charged in said information, but the Court overruled said motion and proper ~~were~~ exceptions noted. (Rec. p. 6).

Plaintiff in error was fined forty dollars ($40.00) and in default to serve six months in the workhouse, proper exceptions were taken to the ruling of the Court, bill of exceptions signed, recognizance given in the sum of one hundred dollars ($100.00) in compliance with the rule of this Court and the case is now here for review.

Assignment of Errors.

First. The Court erred in holding that the plaintiff in error was sufficiently advised by the information which one of the several distinct offenses alleged therein he was called upon to answer.

Second. The Court erred in holding that the Act of Congress, July 8th, 1898, under which this information was drawn, defines with sufficient certainty the offense of vagrancy or any of the other offenses named therein.

Third. The Court in erred holding that the Act of July 8th, 1898 was constitutional and valid.

Fourth. The Court erred in overruling the demurrer filed by the plaintiff in error.

Fifth. The Court erred in holding that the plaintiff in error was not entitled to a trial by jury.

Sixth. The Court erred in overruling the demurrer of plaintiff in error to the evidence produced by the District.

Seventh. The Court erred in not instructing itself, as a matter of law, that upon all of the evidence produced, the plaintiff in error was not guilty, as charged in the information.

ARGUMENT.

1st. The Court erred in holding that the plaintiff in error was sufficiently advised by the information which one of the several distinct offenses alleged therein he was called upon to answer.

The information simply states a conclusion of law and does not state what offense was committed by the accused. It does not say that he was playing a piano in the "Division," that he was a "piano player," or that he was a "professor," and that he spent his time in playing the piano in houses of prostitution. In the case of Walton *vs.* The State, which was a case similar to the case at bar, the Court held that—

> "In an information it is not sufficient to charge that the accused is a vagrant within the meaning of the law. Some one or more of the seven constituents of the offense of vagrancy must be alleged in plain and intelligible words, so as to apprise the accused of the charge against him." (12 Tex. App., 117.)

And the Court, speaking further in the opinion, says that—

> "An indictment or information must aver facts which bring the accused within some of the causes or definitions of the statute which constitutes the offense, otherwise it would not state the offense in plain and intelligible words or apprise the defendant what he is expected to meet." (12 Tex. App., 117.)

The information in this case sets out merely a conclusion of law that the accused was a vagrant, when it should

have charged, in plain and intelligible words, the particular act or thing done or committed which warranted the conclusion.

> "That the pleader must state facts which constitute the offense is too palpable to acquire a reference to authorities in its support." (12 Tex. App., 117.)

In the case before this Court, the defendant was not informed that he was being proceeded against because he was a piano player or a professor of music who made it his business to play the piano for prostitutes and to entertain guests in houses of prostitution.

In a case of vagrancy, the Court held that—

> "Where a person has been put upon trial for an offense, and the information failed to define that offense, but that the accused had been notified that the Government is proceeding on a particular ground, and that ground is not set out in the information, it cannot be presumed that he was prepared to meet the charge."
>
> Allen *vs.* State of Ga., 51 Ga., 264.
> Batchelor *vs.* United States, 156 U. S., 426.

It may be said that certainty in pleading applies only to felony, but, in order to rebut that presumption, the Supreme Court has said, in the case of Evans *vs.* United States, that—

> "In cases of misdemeanors, the indictment must be free from all ambiguity and leave no doubt in the mind of the accused and the Court of the offense intended to be charged, not only that the

former may know what he is called upon to meet, but that upon the plea of former acquittal or conviction, the record may show with accuracy the exact offense to which the plea relates."

Evans *vs.* United States, 153 U. S., 584, 587 and 588.
Vol. 10, Amer. & Eng. Encyc., pl'd. and pr., 473.

The plaintiff in error was not sufficiently informed by the information what he was called upon to meet, and he therefore would be at a loss to know of what offense he was acquitted or convicted, and hence he could not plead a former acquittal or conviction in case he was called upon to plead a former acquittal or conviction as a bar to a subsequent charge upon some one of the several alleged offenses set forth in the information.

2nd. The Court erred in holding that the Act of Congress, July 8, 1898, under which this information was drawn, defines with sufficient certainty the offense of vagrancy or any of the other offenses named therein.

The act of July 8, 1898, in setting out the various offenses, does not define, nor does it attempt to define, what would constitute the offense of vagrancy or a person of evil life and fame, and it is submitted that a statute failing to define an offense is null and void. If it be a common law offense and the statute in changing the common law offense failed to define the offense, then we must rely on the common law definition. The common law definition for the offense of vagrancy is—

> "A person who, being able to work, refuses to do so, but who lives idly and roams from place to place, begging, or living without labor or visible means of support."
>
> 1st Ed. Amr. & Eng., Incyc. of Law, Vol. 28, p. 36.

It is not for the Court to say or define what shall constitute a crime or an offense, but it is the duty of the legislature to describe and define the offense with definiteness and certainty and leave it to the Courts after hearing the evidence, to say whether or not the facts, as shown by the evidence, bring the offense within the definition which the legislature has declared. If it is to be contended that the Court or Jury shall define what shall constitute the offense, they will be the law making power and not the administrators of the law. This Court, in speaking upon this subject in the case of Czarra *vs.* District of Columbia, said—

> "That the right of the accused to be informed of the nature and the cause of the accusation against him is preserved by the sixth amendments to the Constitution of the United States. In order that he may be so informed by the indictment or information presented against him, the first and fundamental requisite is that the offense of which he stands charged shall be defined with reasonable certainty. Not only must this be stated in the complaint, but the legislature itself must define the offense with reasonable precision. This duty must be performed by the legislature itself and cannot be delegated to the judiciary. When the legislature declares the offense in words so indefinite as in the present complaint, the Courts possesses no arbitrary discretion to discriminate between

> acts which are, and acts which are not intended to be made unlawful and can only declare the statute void for uncertainty."
>
> Czarra *vs.* District of Columbia, case No. 1512.
> 32 Wash. Law Rep. 744.

A vagrant has been defined by Bouvier as being "a person who refuses to work or goes about begging." Taking this to be the proper definition of vagrancy, we do not see where or how it could in any manner be disorderly conduct or a person of evil life and fame. There is nothing in the common law definition for vagrancy defining disorderly persons or persons of evil life and fame and in the failure of the statute to define what shall constitute the several offenses named in the act known as the vagrancy law, we are without means to determine what shall constitute vagrancy, except the definition given by the common law. It was said in the case of Sarah Way, who was arraigned upon an information charging her with vagrancy, that—

> "Vagrancy was distinguished from disorderly conduct and breaches of the peace, and includes only such cases of vagabondage as are known to the common law and its statutory definition cannot be enlarged by municipal ordinances."
>
> Matter of Way, 41 Mich., 299.
> Matter of Jordan, 90 Mich., 3.

Vagrancy, disorderly conduct, evil life and fame are all distinct and separate offenses and cannot be considered as one and the same thing, and this can be readily seen when we take in consideration what was said by counsel for the defendant in error on page 5 of the record in re-

ply to the question: "Upon which of the charges contained in the information the defendant was being tried?" His reply was: "That which charged him with being a man of evil life and fame, that he abandoned all others." This within itself shows that there must be a difference between the several offenses named in the Act of July 8th, 1898, or else counsel for the defendant in error would not be forced to abandon any of the other offenses. There is not only a difference in the meaning of the several offenses, but there is a difference in the punishment.

3d. The Court erred in holding that the Act of July 8th, 1898, was constitutional and valid.

Since the Act of July 8th, 1898, does not define the several offenses named therein, and the common law does not define what shall be the requisite that will constitute a person of evil life and fame, then it is reasonable to infer that there is no such thing known to the law as a person being guilty of being "a person of evil life and fame." You cannot say that he is a vagrant, because the common law does not mention such to be vagrancy, and the Act of July 8th, 1898, does not say what shall constitute a person of "evil life and fame," so the Court is without a definition as to what will constitute "evil life and fame." The said Act does not say what shall constitute an idle or disorderly person, and we are forced to revert to the common law, but the common law does not help us any, for in defining what shall constitute vagrancy, it does not define what shall constitute disorderly conduct. It cannot be left to the Court to supply what was the duty of the legislature to supply. There must be a competent and efficient expression of the legislative will. Drake *vs.*

Drake, 4 Dev. 110, Chief Justice Ruffin said that—

> "Whether a statute be a public or private one, if the terms in which it is couched be so vague as to convey no definite meaning to those whose duty it is to execute it, either ministerially or judicially, it is necessarily inoperative."
>
> See also State *vs.* Perkins, 91 N. C., 550.

The act is further unconstitutional and void, because it sets forth several distinct and separate offenses that are not only unlike in their true meanings, but are unlike in their punishment.

The punishment for a person found guilty of being a vagrant is different from a person being found guilty of disorderly conduct, and, in fact, all of the several offenses mentioned in said act, which are violations of law, have separate and different degrees of punishment. And all of the authorities agree that where the offenses are different in their meaning and different in their punishment, they cannot be charged in the same count or information.

4th. The Court erred in overruling the demurrer filed by the plaintiff in error.

As has been said heretofore, the information contained several separate and distinct offenses, and each of which had a different meaning and different punishment. It is contended that they should be tried upon different counts or informations. The act does not provide in the alternatives the means by which the offenses may be committed. It is said in Vol. 10, Amer. & Eng. Incyc., pl'd. and pr., that—

> "Where a statute provided in the alternative several means by which the offense may be committed, or where the intent and purpose is set out in several aspects disjunctively, they may all be charged in setting out one and the same offense, but the rule has been limited in its application to cases where the offense created in the statute are not repugnant, either in themselves or in the punishment therefor."
>
> Vol. 10, Amer. & Eng. Incyc., 537 and 538.
> Cochran *vs.* United States, 157 U. S., 290.

The information upon which the plaintiff in error was tried contained several separate and distinct offenses which are repugnant in themselves and in their punishment. It is admitted that some of the offenses are a violation of law in the Act of July 8th, 1898, but they are not such offenses as the common law has defined to be vagrancy.

The other alleged offenses in said act are not violations of law, because they are not defined or mentioned as offenses punishable by the common law, nor does the Act of July 8th, 1898, say what shall constitute said offenses.

5th. The Court erred in holding that the plaintiff in error was not entitled to a trial by jury.

According to the act upon which this information was drawn, the accused can be fined not to exceed forty dollars or be required to give securety for his good behavior for a period of six months. There are no provisions made in the event that he be unable to pay his fine or unable to give the security required by said act. In the default of the payment of the fine or giving the security as required

by the terms of said act, the Court is without power to sentence the accused to imprisonment, unless the Court sentence the accused to imprisonment under the latter clause of Section 18 of the Act of July 29th, 1892, which reads as follows :

> " Any person convicted of any violation of any of the provisions of this act, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the workhouse in the District of Columbia for a term not to exceed six months for each and every offense."
>
> Police Reg., p. 78, Sec. 18.

In the case at bar plaintiff in error was fined forty dollars and in default to be imprisoned in the workhouse for six months and it is presumed that the Court, in passing sentence upon the accused, sentenced him under the provisions set forth in the latter clause of the said Section 18 of said Act of July 29th, 1892.

The plaintiff in error was entitled to a trial by jury under Section 44 of the District Code. Section 44 of the District Code provides that—

> " In all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the trial shall be by the Court without a jury, unless in such last named cases wherein the fine or penalty may be fifty dollars or more, or imprisonment as punishment for the offense may be thirty days or more, the accused shall demand a trial by jury, in which case the trial shall be by jury."
>
> D. C. Code, Sec. 44.

The Court has the power to sentence the accused in default of the fine imposed, to be imprisoned for a period of more than thirty days.

The said Section 44 of the District Code especially provides for all cases where the accused would not by force of the Constitution of the United States be entitled to a trial by jury, the person so accused shall be, according to the Code, entitled to trial by jury wherever the fine is fifty dollars or more, or imprisonment as punishment for the offense is thirty days or more. The plaintiff in error was not entitled to a trial by jury so far as the fine was concerned, but was entitled to a trial by jury so far as the imprisonment was concerned. The word "or" is an alternative, and it means one or the other, and not both. In Section 44 it is clearly indicated that it means that the accused will be entitled to trial by jury where the fine is fifty dollars or more, or the imprisonment for the punishment of the offense is thirty days or more. The imprisonment in the case at bar is for more than thirty days, and the accused in demanding a jury trial was entitled to be granted a trial by jury under the said Section 44 of the District Code. It will be noticed that said section says "as punishment for the offense." The word "punishment," according to the authority, means "a penalty inflicted by a court of justice on a convicted offender as a just retribution, and incidentally for the purpose of reformation and prevention." So that if the accused is unable to pay the fine imposed, whether said fine be fifty dollars or one dollar, and the Court has the power to sentence the accused to more than thirty days imprisonment, the accused when he does not pay the fine is punished by the imprisonment. If the imprisonment is more than thirty

days or the Court has the power to imprison the accused for thirty days or more, then the accused had a right to demand a trial by jury. Under the Constitution of the United States the plaintiff in error may not have been entitled to trial by jury, but Congress by enacting into law the said Section 44 gave to the plaintiff in error a right to trial by jury in all cases where the fine is fifty dollars or more or the punishment is thirty days or more, whether he was entitled to a trial by jury by force of the Constitution of the United States or not. Evidently it was the intention of Congress to protect the liberty of persons accused of crimes or offenses by due process of law, and to give to them a right to a trial by jury where they would not have such right under the Constitution of the United States. The United States Supreme Court said in the case of Callan *vs.* Wilson, that—

> "Article 3 of the Constitution of the United States was not only construed to mean all crimes except impeachment, shall be by jury, but in light of the principal which, at common law, determined whether or not a person accused of crime was entitled to be tried by jury, and thus construed, it embraces not only felonies punishable by imprisonment in the penitentiary, but also some classes of misdemeanors, the punishment of which may involve the deprivation of the liberty of the citizen."
>
> Callan *vs.* Wilson, 127 U. S., 540, 7 Benn., (U. S.) 1.

It is submitted that the act upon which the information was drawn, charging the plaintiff in error with a violation of said act, is a misdemeanor and as such, upon a conviction, the Court has the power to deprive the plaintiff in error of his liberty for six months and it clearly

comes within Section 44 of the District Code and the decision of the Supreme Court, because it involves the liberty of a citizen and deprives him of the same without due process of law, which is contrary to the Constitution of the United States and Section 44 of the District Code, which is the law now in force in the District of Columbia.

In the case of Fry, it was said that—

> "Where a person has a right to an appeal from a conviction by the Police Court, that the appeal itself, preserves the right of trial by jury and saves the Acts of Congress from the offense of violating the Constitution of the United States."
>
> 3rd Mackey, 135.

It will be noted in the case cited that the Court did not say accused was not entitled to a trial by jury, in the Court below, but did say by virtue of his right to appeal he then could be tried by jury, but the plaintiff in error has no right to an appeal, because since this case was cited, the right to appeal from the decisions rendered in the Police Court has been abolished and plaintiff in error has no appeal that will warrant or give to him a right to a trial by jury.

The plaintiff in error in the light of Section 44 of the District Code was entitled to be tried by a jury when he made his demand for such trial in the Court below and the Court erred in not granting him this right.

6th. The Court erred in overruling the demurrer of the plaintiff to the evidence produced by the District.

The first witness offered by the District testified that he had known the defendant for the period of twelve years; that he had seen him down in the "Division"

since the first day of March, in houses of prostitution playing the piano; that when he played the piano, prostitutes would sing and dance; that he received $1.50 per night in addition to what he got by collections; that he was known as a "professor" and that he made his living by playing the piano in houses of prostitution. (Rec., p. 5.)

The second and last witness for the District testified to substantially the same thing, excepting that he had only known the defendant about two weeks prior to his arrest and that he had seen him in these houses of prostitution playing the piano. (Rec., p. 5.)

This testimony does not show plaintiff in error to be a vagrant within the meaning of the law, nor does it show him to be an idle and disorderly person, a person of evil life and fame, a person without visible means of support, a person repeatedly about the streets, avenues, etc. If a person is to be convicted because he works in a house of prostitution for pay, then why discriminate. Is not the cook who works for pay a vagrant? Is not the man who sells them food for the market prices a vagrant? Is not the man who rents his house to them a vagrant or a person of evil life and fame as well as the man who plays a piano for pay? Indeed if the act upon which this information is drawn, is to be construed so liberally, it would be unsafe for a physician to attend a prostitute or a lawyer to defend a prostitute, for they would be in great danger of being hauled into Court and charged with being a vagrant, an idle and disorderly person or person of evil life and fame. The testimony offered by the District does not show that the plaintiff in error was guilty of any of the offenses according to the common law, and we cannot say anything about the statute, for it does not

say what shall constitute the offenses charged in the information.

All of the authorities agree that vagrancy laws must be construed strictly. Suppose the District had proven that the plaintiff in error was an idle or disorderly person and a person without visible means of support, even then he would not be guilty of vagrancy or any of the other alleged offenses. In the case of the people *vs.* Forbes, (Supreme Court), 4 Park Crim. (N. Y.), 611, it was decided that :—

> "Because a person was idle it does not necessarily follow that he is a vagrant. The opinion says further that 'while these acts are constitutional, they should be construed strictly and executed carefully in favor of the liberty of the citizen.'"

Taking the common law definition for vagrancy, the question presents itself to the Court, whether under the testimony offered by the District, the plaintiff in error was guilty of vagrancy or any of the other offenses in the information upon which he was charged, and if he be guilty, upon which one of the offenses did the testimony warrant a judgment of guilty, and has the common law or the statute creating the offense of which he has been adjudged guilty, defined that offense.

7th. The Court erred in not instructing itself as a matter of law, that upon all of the testimony produced, the plaintiff in error was not guilty, as charged in the information.

The plaintiff in error produced as a witness in his behalf, his father, who testified that plaintiff in error was

his son; that he worked every day and supported his wife; that he was regularly employed as a driver of a grocery wagon; that he knew nothing of his son playing the piano in the "Division," but ~~that~~ knew his said son worked every day and supported his family. (Rec., p. 6.)

The brother of the plaintiff was the next and last witness produced on his behalf and he testified that his brother worked every day and supported his family and that he did play the piano. (Rec., p. 6.)

Taking all of the testimony, as shown by the record, there is nothing to show that the plaintiff in error was—

> "A vagrant, an idle and disorderly person, a person of evil life and fame, a person without visible means of support, a person repeatedly in and about the streets and etc."

There is nothing in the evidence to show that the plaintiff in error was a vagrant. By the testimony of all the witnesses, it was shown without a doubt that defendant was a hard working man. The evidence shows him to be a law-abiding citizen and, in fact, the evidence shows him to be an honest, industrious and loving husband and not a person liable, under the information upon which he was charged, of being guilty of the offenses named therein.

In view of all the facts herein stated, together with the authorities in support thereof, it is respectfully submitted that the judgment of the Police Court should be reversed.

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